

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED  
-8 JAN 04 PM 2:36  
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK JAMES GARNER,

Defendant.

MEMORANDUM DECISION  
AND ORDER DENYING  
DEFENDANT'S MOTION  
TO SUPPRESS

Case No. 2:03 CR 320 W

BY: DEPUTY CLERK

This matter is before the court on Defendant's Motion to Suppress. On October 23, 2003, the court conducted an evidentiary hearing on the motion. Defendant Mark James Garner ("Garner") was present with his counsel, Richard P. Mauro. The government was represented by Kevin L. Sundwall. Following the hearing, the court ordered a transcript as well as supplemental briefing from the parties. After thorough review and consideration of the pleadings submitted by the parties, the testimony presented at the evidentiary hearing on the motion to suppress, the court enters the following memorandum decision and order.

BACKGROUND

The court finds the relevant facts as follows.<sup>1</sup> On April 11, 2003, at approximately 5:00 p.m., Officer Tyronne Boyd of the South Salt Lake City Police Department received a dispatch call to check on an "unknown problem with a man down, said to be unconscious in a half sitting, half slumped over position for several hours." (Tr. at 5.) Officer Boyd was dispatched to the

<sup>1</sup>Reference to the transcript of the evidentiary hearing conducted on October 23, 2003, will be cited as "Tr. at \_\_\_\_."

Timber Creek Apartments. Officer Boyd was not given a physical description of the individual, but he was given a specific address within the apartment complex identifying the precise location of the individual that was reportedly unconscious. (Tr. at 17.) Officer Boyd was dispatched as the back up officer. (Tr. at 6-7.) Officer Boyd testified that in his experience, when dispatched to a “man down” or similar situation it usually involves public intoxication, but could also be the result of a diabetic problem or other unknown medical problem. (Tr. at 7.)

South Salt Lake Police Officer Robert Ransdell was also called to respond to the Timber Creek Apartments to check on what he testified was a “suspicious circumstance.” (Tr. at 40.) Officer Ransdell testified that dispatch told him that a caller had stated there was a “male sitting slumped, appeared to have been there several hours either in a deep sleep or not breathing.” (Tr. at 40.) Officer Ransdell was dispatched as the primary officer. Officer Ransdell testified that in his experience, when dispatched under circumstances such as these, he must be prepared to investigate a number of things “anywhere from a person that’s passed away to anybody that is intoxicated, passed out, under the influence of drugs.” (Tr. at 40.)

Both Officer Boyd and Officer Ransdell were advised and made aware that the fire department had also been dispatched to the location. (Tr. at 6, 40.) According to the testimony at the hearing, the fire department was dispatched to make a medical assessment of the individual and the police were dispatched to make a safety assessment—to determine whether the individual was a danger to himself and/or the public. (Tr. at 6, 8-9, 14.)

Although Officer Boyd was the backup officer, he was closer to the identified location at the time of the call and he reached the scene first. Officer Boyd was driving a marked patrol car and was wearing his South Salt Lake Police Department uniform, complete with his holster and

gun. (Tr. at 18-19.) Officer Boyd arrived at the location at approximately the same time as the fire department. (Tr. at 6-7.) Upon arrival, Officer Boyd noticed the defendant lying on the grass. (Tr. at 7.) Officer Boyd began walking toward the defendant. Suddenly, and upon seeing Officer Boyd approaching, the defendant stood up and began to walk away from Officer Boyd. (Tr. at 7, 19.) As the defendant attempted to walk away he turned a corner around the building but was unable to proceed further because of a stone wall next to the building. (Tr. at 7, 23.) Officer Boyd testified that he “told [the defendant] to stop and told him that he needed to come back and sit down because the fire department needed to check him out.” (Tr. at 7.)

The defendant returned to his original location. (Tr. at 8, 24.) Officer Boyd observed that rather than sit down on the ground, the defendant “kind of crouched down” and was acting very nervous. Officer Boyd testified that the defendant was “[a]lways looking around, saying everything was cool and he didn’t want any trouble.” (Tr. at 8.) Officer Boyd also observed that the defendant was being “very fidgety” with his hands, moving them in and out of his pockets. (Tr. at 8.)

By this time, approximately four or five paramedics with the fire department had exited their vehicle and transported medical gear and/or equipment to defendant’s location. (Tr. at 24-26.) Officer Boyd testified that he recalled the fire department “checking out” the defendant, but he had no specific recollection of them conducting any particular tests and he was not involved in their examination of the defendant. (Tr. at 26.) After a period of time, and when the Fire Department appeared to have stopped treating or examining the defendant,<sup>2</sup> the defendant once

---

<sup>2</sup>Although the fire department personnel appeared to have stopped treating or examining the defendant, they did not leave the location. (Tr. at 27.)

again attempted to walk away from the scene. (Tr. at 8, 28.) Officer Boyd told the defendant to “sit back down” because they “weren’t done with him yet.” (Tr. at 8.)

Officer Boyd had not received any information regarding any tests, test results or other procedures done by the fire department. (Tr. at 36.) Moreover, Officer Boyd testified that even if the fire department had finished checking on the defendant, the police still needed to make an assessment as to whether the defendant was a danger to himself or others. (Tr. at 8, 34.) Officer Boyd testified that he had not yet had an opportunity to investigate whether the defendant was a “public intox” or whether the defendant was under the influence of drugs or alcohol such that he was a danger to himself or others. (Tr. at 9, 34-35.) Finally, Officer Boyd had noticed some gang tattoos and was also concerned with the fact that the defendant was acting so nervous. (Tr. at 8-9.)

Officer Boyd asked the defendant his name and also asked him about the tattoos on his arm. The defendant responded that his name was Mark Garner and indicated that the tattoos were because he was with People’s Nation, which the officer knew to be a violent Chicago based gang. (Tr. at 10.) The defendant did not provide identification, but simply told Officer Boyd his name and date of birth. (Tr. at 11.)

It was at approximately this time that Officer Ransdell, the primary officer, arrived at the location. Officer Boyd testified that he approached Officer Ransdell, informed him of the situation and told him that the defendant was “acting really weird and really nervous.” (Tr. at 10-11, 41.) Officer Boyd then walked a short distance away and went to have dispatch check the defendant for warrants. (Tr. at 9, 11, 43.)

While Officer Boyd was checking for warrants, Officer Ransdell approached the

defendant and engaged in conversation. Officer Ransdell similarly observed the defendant to be acting very nervous and disoriented. (Tr. at 44.) Officer Ransdell testified that the defendant was walking around, “jittery looking” and a little sweaty, and that the defendant was gazing back and forth and seemed to be looking past the horizon. (Tr. at 43, 44.) Officer Ransdell testified that the defendant had very deep pockets and that he kept putting his hands all the way down in his pockets and then pulling them out. (Tr. at 44.) Officer Ransdell asked the defendant on three separate occasions to “keep his hands where I could see them.” (Tr. at 43.).

Officer Ransdell testified that he had some safety concerns. (Tr. at 43.) Like Officer Boyd, Officer Ransdell had not been informed of any results of the fire department’s examination of the defendant. (Tr. at 43-44.) Given the defendant’s nervous behavior, Officer Ransdell thought the defendant was probably impaired on drugs of some kind. (Tr. at 44.) Officer Ransdell testified that he asked the defendant if the reason he was nervous was that he was high on drugs and, according to Officer Ransdell, the defendant responded that he had smoked dope earlier that day. (Tr. at 44.)

During the course of their conversation Officer Ransdell asked the defendant why he was at the apartment complex to which the defendant replied that he had no recollection of why he was there. (Tr. at 43.) Officer Ransdell testified that the defendant told him that he did not live at the apartment complex and he did not have any friends who lived there. (Tr. at 44.) The defendant said that he had passed out and did not know how long he had been there. (Tr. at 44.) Based on this information, Ransdell testified that he began to suspect that the defendant might have been at the apartment complex and inside the gated part of the complex for the purpose of committing residential or vehicle burglaries or some other kind of criminal mischief. (Tr. at 46.)

There were no reports, however, of burglaries, or “any criminal activity in the apartment building” that day. (Tr. at 55.) Officer Ransdell testified that he could not figure out why the defendant was acting so nervous and so he simply asked. Officer Ransdell testified that the defendant responded, “I’ve got some warrants.” (Tr. at 44.)

During this time, dispatch had informed Officer Boyd that the defendant did, in fact, have outstanding warrants. (Tr. at 12.) While Officer Boyd was walking back to where Officer Ransdell and the defendant were talking, Officer Boyd overheard the defendant admit that he had some warrants. (Tr. at 12.)

Officer Ransdell testified that upon learning that the defendant had warrants he wanted to find out what the warrants were for. (Tr. at 45.) He testified that they “don’t book everybody on warrants unless there is a substantial amount.” Officer Ransdell explained that it “depends on the nature of the crime, those types of things.” (Tr. at 45.) Officer Ransdell testified that if the defendant had warrants and they were substantial, he wanted to take the defendant into custody. (Tr. at 45.)

Officer Ransdell testified that he told the defendant, “you’ve got some warrants, no big deal,” but also indicated that they were going to detain him until they could determine the substance of those warrants. (Tr. at 12, 45.) Officer Ransdell told the defendant to turn around and put his hands behind his back. The defendant began to comply and then ran from the officers. (Tr. at 12.) The officers, along with fire personnel, chased the defendant and tackled him. (Tr. at 47.) The defendant continued to resist arrest. The assistance of several officers was necessary in order to place the defendant in handcuffs. (Tr. at 47.) In a search incident to the arrest, the police discovered a handgun and burglary tools. (Tr. at 46-47.)

## DISCUSSION

Investigative detentions are analyzed under the principles stated in Terry v. Ohio, 392 U.S. 1 (1968). Whether an investigative detention is reasonable depends upon a two-part inquiry: (1) was the officer's action justified at its inception, and (2) was the officer's action reasonably related in scope to the circumstances which justified the initial interference. Id. at 8; United States v. Botero-Ospina, 71 F.3d 783, 786 (10<sup>th</sup> Cir. 1995), cert. denied, 518 U.S. 1007 (1996).

### I. Justification for the Investigative Detention

The defendant argues that Officer Boyd's action was not justified at its inception. Specifically, he claims that the anonymous telephone call was neither sufficiently detailed nor corroborated and therefore could not provide a sufficient basis for the investigative detention.

Under the standard set forth in Terry v. Ohio, 392 U.S. 1 (1968), an investigative detention is warranted if "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion," id. at 21, and support a reasonable suspicion that "criminal activity may be afoot," id. at 30. See United States v. Shareef, 100 F.3d 1491, 1500 (10<sup>th</sup> Cir. 1996) (providing an investigative detention must be supported by a reasonable suspicion of criminal activity).

Applying this standard to the case at bar the court concludes that the investigative detention was warranted. The facts indicate that dispatch received a call reporting a man who appeared to be in a deep sleep or unconscious for several hours on the grounds of the Timber Creek Apartments. Both fire department personnel and police officers were dispatched and responded to the call. Although not provided with a physical description of the man, Officer

Boyd was given a specific address within the apartment complex, pin-pointing the precise location of the man. When Officer Boyd arrived at the address provided by dispatch he, in fact, found a man lying on the ground, which corresponded with the information he had received. Although an anonymous tip standing alone may be insufficient to support an investigative detention, independent police investigation can sufficiently corroborate a tip. See Alabama v. White, 496 U.S. 325, 327 (1990) (recognizing that there are situations in which an anonymous tip, suitably corroborated, provides sufficient indicia of reliability to provide the reasonable suspicion necessary to make an investigatory stop). In this case, the information provided by the anonymous telephone call was independently corroborated upon Officer Boyd's arrival at the location and provided reasonable suspicion to stop and detain the defendant.

Moreover, in addition to the corroborated dispatch information, after arriving at the location Officer Boyd observed further unusual and suspicious behavior. The defendant, upon seeing Officer Boyd, suddenly got up and attempted to walk away from the location. When Officer Boyd instructed the defendant to return, Officer Boyd observed the defendant to be acting very unusual and extremely nervous. The defendant's nervous and evasive behavior are relevant factors in determining reasonable suspicion. Illinois v. Wardlow, 528 U.S. 119 (2000) (recognizing that nervous and evasive behavior are pertinent factors for reasonable suspicion).

Given these facts, the court concludes that Officer Boyd possessed a reasonable and articulable suspicion to believe that criminal activity may have been afoot, Terry, 392 U.S. at 30, and that the situation warranted further investigation into a possible public intoxication or other



medical problem.<sup>3</sup> See, e.g., Cady v. Village of McCook, 57 Fed. Appx. 261, 2003 WL 124184 (7<sup>th</sup> Cir. Jan. 13, 2003) (unpublished) (providing that citizens' reports of a man walking wet and barefoot through neighborhood while talking to himself provided officers with reasonable basis for conducting investigatory stop where detainee matched the description in reports and could have needed medical assistance, been under the influence of drugs or alcohol, or suffering from mental illness).

## II. The Scope of the Investigative Detention

Next, the defendant argues that even if the initial detention was lawful, the scope of the detention exceeded the circumstances which justified the initial interference. Specifically, the defendant claims that he should have been allowed to leave after the fire department personnel concluded their medical examination.

The Supreme Court has instructed that an investigative detention must "last no longer than is necessary to effectuate the purpose of the stop, and the scope of the detention must be carefully tailored to its underlying justification." Florida v. Royer, 460 U.S. 491, 500 (1983). Once the purpose for the stop and detention is complete, the person must be allowed to proceed on their way unless the police can articulate reasonable suspicion of criminal conduct. United States v. Gonzalez-Lerma, 14 F.3d 1479, 1483 (10<sup>th</sup> Cir.), cert. denied, 511 U.S. 1095 (1994).

At the time of the initial detention, both fire department personnel and police officers had been dispatched to and arrived at the scene. The evidence at the hearing indicated that the fire

---

<sup>3</sup>Permissible encounters between police officers and citizens are not limited to situations involving possible criminal activity, but also include situations in which persons may need help or are in danger of harming themselves or others. See, e.g., Terry v. Ohio, 392 U.S. at 14 n.9 (noting that police encounters are often initiated for reasons other than prosecuting crime, such as helping an intoxicated person find his way home).

department personnel were responsible for assessing the medical condition of the defendant and the police officers were responsible for assessing safety concerns, i.e., whether the defendant was a danger to himself or to the public. Having carefully considered the factual circumstances which justified the initial detention, the court concludes that investigation into these dual concerns (medical and safety) was warranted by the situation. Accordingly, although the defendant contends he should have been allowed to leave after the medical personnel concluded their evaluation, it is the opinion of the court that the officers were justified in continuing to detain the defendant because, despite the medical testing, the purpose of the initial detention had not yet been effectuated. See Royer, 460 U.S. at 500.

Officer Boyd testified that he had not been involved in the fire department's medical examination and was not informed as to any of their conclusions or test results. As such, even if the medical personnel were finished with the defendant, Officer Boyd had a continuing and remaining need to assess the defendant's condition to determine whether he was under the influence of drugs or alcohol for purposes of a "public intox," and to assess whether the defendant was a danger to himself or others.

The officers had a legitimate interest in investigating safety concerns and possible criminal behavior, and as part of that investigation, they were permitted to obtain the defendant's name and run a warrants check. See, e.g., United States v. Hensley, 469 U.S. 221 (1985) (finding it was proper to check defendant's identification where he was stopped in response to a "wanted flyer" issued by another department); United States v. Gonzalez-Lerma, 14 F.3d 1479, 1483 (10<sup>th</sup> Cir.) cert. denied, 511 U.S. 1095 (1994) (during routine traffic stop officer may request driver's license, vehicle registration and run a warrants check); United States v. Diaz-Lizaraza, 981 F.2d

1216 (11<sup>th</sup> Cir. 1993) (request for identification is a reasonable and not overly intrusive way to investigate suspicion of criminal activity). Similarly, the limited questioning by the officers was not intrusive and was directly related to gaining an understanding of how and why the defendant was found “passed out” on the grounds of the apartment complex. Finally, there is no evidence that the defendant was detained for an inordinate amount of time.

Under the circumstances presented in this case, the court believes that the officers acted reasonably in investigating whether the defendant might be a danger to himself or to the public, and in attempting to find a reason for defendant’s unusual condition and behavior.<sup>4</sup> “The allowable scope of an investigative detention cannot be determined by reference to a bright-line rule; ‘common sense and ordinary human experience must govern over rigid criteria.’” United

---

<sup>4</sup>The instant case is similar to United States v. Neemann, 61 F. Supp. 2d 944 (D. Neb. 1999). In Neemann, a police officer received a call regarding an individual “slumped over the steering wheel” of a car parked on the side of the road. Id. at 949. When the officer arrived at the scene, he approached the parked car and observed the defendant asleep or unconscious at the wheel. The officer knocked on the window, causing the defendant to wake up, and asked for identification. The officer then asked the defendant to exit the vehicle so he could conduct a series of field sobriety tests, which the defendant passed. The officer could not smell alcohol on the defendant’s breath, and it did not appear that the defendant was intoxicated. Id. Nonetheless, the officer did not return the defendant’s identification and decided to look inside the defendant’s vehicle to see if he could determine why the vehicle was parked askew as well as the reason for the defendant’s bloodshot and swollen eyes. Upon looking in defendant’s vehicle, drugs were found and the defendant was arrested and searched. Id. at 950. The defendant filed a motion to suppress which the court denied.

The court concluded that the investigative detention was reasonable under the standards established in Terry. First, the court concluded that the dispatch information, which was corroborated upon arrival at the scene, provided reasonable suspicion to initially detain the defendant to determine if he had been driving while intoxicated. Id. at 953. Second, the court determined that the scope of the detention was not unreasonable. Although the defendant claimed that the officer should have returned his identification and permitted him to leave after he passed the sobriety tests, the court concluded that it was “perfectly reasonable” for the officer to continue to detain the defendant “so that he could look inside of the vehicle to see if there was anything inside of the car which could explain defendant’s condition.” Id.

States v. Neff, 300 F.3d 1217, 1220 (10<sup>th</sup> Cir. 2002) (quoting United States v. Sharpe, 470 U.S. 675, 685 (1985)). Accordingly, the court concludes that the officers' actions were "reasonably related in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 20.

Therefore, based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that defendant's motion to suppress is DENIED.

DATED this 8<sup>th</sup> day of January, 2004

BY THE COURT:

A handwritten signature in cursive script that reads "David K. Winder". The signature is written in dark ink and is positioned above a horizontal line.

---


David K. Winder  
Senior District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of January, 2004, I served copies of the foregoing  
by United States mail, postage prepaid, and/or by inter-office delivery, addressed as follows:

Kevin L. Sundwall  
185 S. State Street, Suite 400  
Salt Lake City, Utah 84111

Richard P. Mauro  
43 East 400 South  
Salt Lake City, Utah 84111

  
\_\_\_\_\_  
Secretary

United States District Court  
for the  
District of Utah  
January 8, 2004

tsh

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cr-00320

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation  
DISTRICT OF UTAH

,  
EMAIL

USMS  
DISTRICT OF UTAH

,  
JFAX 9,5244048

Mr Richard P Mauro, Esq.  
43 E 400 S  
SALT LAKE CITY, UT 84111  
EMAIL

Kevin L. Sundwall, Esq.  
US ATTORNEY'S OFFICE  
, 84111  
EMAIL